

The Honorable Timothy W. Dore

Chapter: 7

Hearing: February 8, 2013

9:30 a.m.

Location: Room 8106, US Courthouse,

700 Stewart St., Seattle, WA

Response Date: February 1, 2013

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UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

In Re:

BANKRUPTCY NO. 12-22799-TWD

BENJAMIN EUGENE KEITH,

CHAPTER NO. 7

Debtor.

MOTION FOR RELIEF FROM STAY AND  
ABANDONMENT

TO: CLERK OF THE U.S. BANKRUPTCY COURT,  
BENJAMIN EUGENE KEITH, Debtor  
MICHELLE CARMODY KAPLAN, Attorney for Debtor,  
JAMES RIGBY, Trustee and  
U.S. TRUSTEE

PLEASE TAKE NOTICE that Provident Funding Associates, L.P., and its successors and assigns, ("Movant") has filed the attached Motion for Relief from the Automatic Stay and Abandonment (the "Motion") in the above-entitled and numbered Chapter 7 case.

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3 **MEMORANDUM OF POINTS AND AUTHORITIES**  
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5 **I.**  
6 **INTRODUCTORY STATEMENT**  
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8 Movant requests the Court to grant it relief from the automatic stay pursuant to 11 U.S.C.  
9 362 because there is no equity in the Property to benefit the Debtors or the estate and because the  
10 Debtors have failed to maintain regular monthly payments.

11 **II.**  
12 **STATEMENT OF FACTS**  
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14 1. **The Secured Debt.** On or about April 15, 2009, BEN EUGENE KEITH, made  
15 and delivered a Promissory Note in the original principal amount of \$387,000.00, secured by a  
16 Priority Deed of Trust on the Property commonly known as 2318 Belvidere Ave SW, Seattle,  
17 WA98126 (the "Property"), located at:

18 LOTS 1, 2 AND 3, BLOCK 83, REPLAT OF WEST SEATTLE LAND AND  
19 IMPROVEMENT COMPANY'S THIRD PLAT, ACCORDING TO THE PLAT  
20 THEREOF RECORDED IN VOLUME 9 OF PLATS, PAGE 58, RECORDS OF  
21 KING COUNTY, WASHINGTON.

22 EXCEPT THE NORTHEASTERLY 10 FEET OF SAID LOT 3;

23 SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON  
24

25 Movant is the holder of the beneficial interest in the Note and Deed of Trust. True and  
26 correct copies of the endorsed Note, Deed of Trust, and Assignment of Deed of Trust are attached as  
27 Exhibits "1," "2," and "3," respectively.  
28

2. **The Default Under The Note.** Movant's Note and Deed of Trust are contractually due for the May 1, 2012 payment. As a result of the default, Movant desires to continue foreclosure action against the Property. The total delinquency under the Note is set forth in detail below.

Monthly Payments from 5/1/12 to 1/1/13 of \$2,411.16 each	\$21,700.44
Late Fees	\$551.82
Uncollected Fees	\$1,644.77
<b>TOTAL</b>	<b>\$23,897.03</b>

These figures are estimates only, and subject to change as additional fees and costs may be incurred. In addition, additional payments may come due.

3. **The Debtor's Interest In The Property.** The Debtor is the owner of record of the Property.

4. **The Filing Of The Instant Petition.** On December 27, 2012, BENJAMIN EUGENE KEITH filed the instant Chapter 7 Petition as Case No. 12-22799-TWD.

5. **The Total Indebtedness Under The Note.** The approximate indebtedness owed to Movant, exclusive of attorneys' fees, is as follows:

Principal Balance	\$387,039.47
Interest	\$14,461.31
Late Fees	\$551.82
Other Fees	\$1,644.17
Escrow	\$1,305.01
<b>TOTAL</b>	<b>\$405,002.38</b>

Please contact Movant's counsel for a full payoff quote.

6. **The Total Liens On The Property.** The Property is encumbered by the following liens:

SECURED CREDITOR

LIEN AMOUNT

1. OneWest	\$ 203,897.00
2. Movant (2 <sup>nd</sup> Trust Deed)	405,002.38
<b>TOTAL</b>	<b>\$ 608,899.38</b>

7. **The Value Of The Property.** According to Debtor's sworn schedules, the Property has a value of only \$408,320.00. Accordingly, there is no equity in the Property to benefit the Debtors or the estate. True and correct copies of the Debtor's Schedules A and D are attached hereto as Exhibit "4."

8. **Foreclosure Status.** No foreclosure was pending at the time of the bankruptcy filing.

**III.**  
**CONCLUSION.**

Based on the forgoing, the stay should be terminated. Movant has satisfied its burden under 11 U.S.C 362(d)(1) as Debtor(s) has failed to make monthly payments that have come due, and relief should be granted for cause. Movant has also satisfied its burden under 11 U.S.C (d)(2) as there is no equity in the property, and the property is not necessary for reorganization. For the foregoing reasons, and based upon the evidence set forth in this Motion, this Court should grant the relief from the automatic stay, and co-debtor stay, if applicable, to allow Movant to enforce its rights and remedies under its Note and Deed of Trust including a waiver of the 14-day stay provided by Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure. Movant requests that the Order be binding and

1 effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11  
2 of the United States Code.

3  
4 Movant seeks relief for the purpose of exercising its remedies available under state law, up to  
5 and including foreclosure of its mortgage against the Debtors interest in the Property. Movant further  
6 seeks relief in order to contact the Debtor by telephone or by written correspondence in order to  
7 discuss the possibility of a forbearance agreement, loan modification, refinance agreement or other  
8 loan workout/loss mitigation agreement.

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10 Furthermore, Movant is specifically requesting the Court to award Movant's attorneys fees  
11 and costs incurred in connection with this matter pursuant to the terms of Movant's Note and Deed of  
12 Trust.

13  
14 DATED this 15th day of January, 2013.

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16  
17 /s/ Lisa McMahon-Myhran  
18 Lisa McMahon-Myhran, 27559,  
19 Maya Anderson, 41181  
20 ROBINSON TAIT, P.S.  
21 Attorneys for Provident Funding Associates, L.P. and its  
22 successors and assigns  
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